

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

GREGORY WAYNE QUINN,

Plaintiff,

vs.

D. SINGH, *et al.*,

Defendants.

Case No. 11cv1085 DMS (JMA)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
GRANTING IN PART MOTIONS TO  
DISMISS**

Plaintiff Gregory Wayne Quinn, a state prisoner proceeding *pro se*, filed an action pursuant to 42 U.S.C. Section 1983 alleging violation of his constitutional rights. He claims three prison officials violated his Eighth Amendment rights by being deliberately indifferent to the threats to his safety.

The case was referred to United States Magistrate Judge Jan M. Adler for a report and recommendation in accordance with 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.3. Initially, Defendants F. Rodriguez and B. Smith filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Subsequently, Defendant D. Singh, represented by separate counsel, also filed a Rule 12(b)(6) motion. On July 27, 2012 the Magistrate Judge issued a Report and Recommendation, recommending to grant the motions in part. Plaintiff has not filed any objections.

A district judge "may accept, reject, or modify the recommended disposition" on a dispositive matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes.

1 Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of  
 2 those portions of the [report and recommendation] to which objection is made." 28 U.S.C.  
 3 § 636(b)(1). When no objections are filed, the *de novo* review is waived. Section 636(b)(1) does not  
 4 require review by the district court under a lesser standard. *Thomas v. Arn*, 474 U.S. 140, 149-50  
 5 (1985). The "statute makes it clear that the district judge must review the magistrate judge's findings  
 6 and recommendations *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*,  
 7 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in the original)..

8 In the absence of objections, the court **ADOPTS** the Report and Recommendation. For the  
 9 reasons stated in the Report and Recommendation, it is **ORDERED** as follows:

10 1. The motion to dismiss filed by Defendants Rodriguez and Smith (doc. no. 18) is  
 11 **GRANTED**. Plaintiff's claims for damages against Defendants Rodriguez and Smith in their official  
 12 capacities are **DISMISSED WITH PREJUDICE**. In other respects, his Eighth and Fourteenth  
 13 Amendment claims are **DISMISSED WITH LEAVE TO AMEND**.

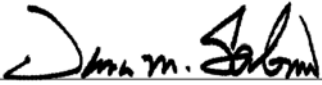
14 2. The motion to dismiss filed by Defendant Singh (doc. no. 37) is **GRANTED WITH**  
 15 **LEAVE TO AMEND** to the extent Plaintiff claims violation of his Fourteenth Amendment rights.  
 16 In all other respects, her motion is **DENIED**.

17 3. No later than **October 5, 2012**, Plaintiff must file and serve either an amended complaint,  
 18 or a notice of election not to file an amended complaint and stand on the complaint as presently  
 19 alleged.

20 4. If Plaintiff files an amended complaint, Defendants' response must be filed and served  
 21 within the time set forth in Federal Rule of Civil Procedure 15(a)(3).

22 **IT IS SO ORDERED.**

23  
 24 DATED: September 5, 2012

25   
 26 HON. DANA M. SABRAW  
 27 United States District Judge  
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